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C O N F I D E N T I A L LA PAZ 000615

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TAGS: PHUM PGOV PREL BL

SUBJECT: WILL BOLIVIA'S CONSTITUTIONAL TRIBUNAL RISE AGAIN?

Classified By: Acting EcoPol Chief Joe Relk for reasons 1.4 (b) and (d)

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Summary
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¶1. (C) President Evo Morales' Movement Towards Socialism (MAS) party appears to have a renewed interest in Bolivia's highest constitutional court)- after two years of harassing the court's members with pay cuts, impeachment charges, and threats from pro-MAS groups. Bowing to pressure, nine of the Constitutional Tribunal's 10 magistrates have quit since Morales took office, leaving the court without a quorum to function. The Tribunal's remaining magistrate Dra. Silvia Salame held a press conference March 17 to highlight the Tribunal's importance to Bolivian democracy, emphasizing that only the Tribunal could grant legitimacy and legality to the competing referenda proposed by the MAS and opposition-led lowland departments (states). Salame sent the same message to Vice President Alvaro Garcia Linera in late February, and also reiterated her pledge to mount an impeachment case against him if he did not vigorously promote the appointment of new magistrates. For months the MAS has blocked the appointment of new magistrates, perhaps to prevent there being a judicial body that could rule on its questionable tactics in Congress and the Constituent Assembly. However, according to Salame, the MAS now appears to want to accelerate the appointment of new magistrates to the court, hoping the new Tribunal will rule against the May 4 autonomy referenda. End Summary.

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Background on the Constitutional Tribunal
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¶2. (SBU) Bolivia's Constitutional Tribunal is county's highest court on constitutional matters, in contrast to the Supreme Court, which is the highest court of appeals for all other matters. The Tribunal is charged with ruling on the legality (constitutionality) of executive and legislative branch actions, and is also responsible for hearing individual cases of government violations of civil rights.

Normally the Tribunal has five "titular" (full) members and five "suplente" (alternate) members. Dra. Silvia Salame is the last remaining magistrate on the Constitutional Tribunal.

All other members resigned, some over the across the board 50 percent salary cut Morales imposed early in his administration, others quit after the MAS consistently harassed the magistrates with politically motivated impeachment charges. Pro-MAS groups have also on occasion marched on the court and attacked its building, one time destroying its facade with dynamite blasts. The Tribunal has lacked a quorum (a minimum of three members) since October 12007. The court now has nearly a 2000 case backlog.

MAS Needs the Constitutional Tribunal

¶3. (U) During a March 17 press conference Dra. Silvia Salame demanded that Congress fulfill its duties to appoint new Constitutional Magistrates. Salame explained that only the Tribunal has the authority to rule on the legality of upcoming referenda)- the national referendum on the MAS draft constitution and the departmental (state) autonomy referenda demanded by the opposition lowland departments. Salame stated, "If there is no Constitutional Tribunal, the referenda in this country cannot be carried out, neither the consultation (referendum) on the Constitution, nor the (referenda) on autonomy." Salame met the same day with Congress' Constitutional Commission, led by opposition Senator Luis Vasque, to impress upon it the need for a speedy appointment process. Vice President Alvaro Garcia Linera and Justice Vice Minister Wilfredo Chavez have both signaled the ruling MAS party is now prepared to move forward quickly on appointments.

¶4. (C) During a March 12 meeting with poloff, Salame explained that the MAS now wants a functioning Constitutional Tribunal, because it needs the court to rule on the legality (or illegality) of the departmental autonomy statutes referenda. According to Salame, the MAS is concerned that the opposition will use a technical administrative procedure to argue that the Tribunal's lack of action on cases regarding its proposed referenda constitutes a defacto "green light" for proceeding with its May 4 referenda. The "silencio administrativo" procedure is a rule typically applied to the executive branch that requires a government body to respond to a request within eight days. Under "silencio administrativo," a lack of response constitutes defacto approval. While Salame argues the procedure is not applicable to cases sent to the Tribunal, she noted that ironically only the Tribunal could rule whether the procedure was being incorrectly applied. Salame stated she had not yet formally acknowledged receipt of the cases, arguing she is using them as a leverage to get Congress to appoint judges.

¶5. (C) Magistrate Salame also acknowledged that it is in the MAS' best interest to re-constitute the court because the MAS could in effect "control" the court with appointees that are disposed to the MAS. However, she argued, that a MAS-dominated Tribunal would not necessarily act as a MAS rubber stamp. Salame believes that a MAS-dominated Tribunal would be bound to follow existing Tribunal jurisprudence.

¶6. (C) Salame states she spoke with Vice President Alvaro Garcia Linera at length (over two hours) February 27 about the need for Congress to appoint new magistrates to the Tribunal so that a quorum can be restored. She states she emphasized the Tribunal's role in preserving Bolivian democracy and the rule-of-law. She stressed the conversation was very cordial and that the Vice President listened intently. Nonetheless, she acknowledged that the Vice President's actions in Congress the following day left her feeling that her conversation had yielded few if any results.

Impeachment Case Against the Vice President

¶7. (C) According to Salame she explained to the Vice President that if he did not deliver on magistrate appointments, she would file an impeachment case against him and the Congress' Constitutional Commission. She noted that she would push for impeaching Garcia Linera in his capacity as President of Congress, not in his role as the country's Vice President, to ensure the case is tried within the Supreme Court. Impeachment trials of executive branch officials are handled in Congress. As the MAS holds a majority in the lower house, an impeachment of the Vice President in Congress would likely die a quick death.

¶8. (C) Salame explained that she would begin her "impeachment campaign" March 17, but would wait until March 31 to officially file her claim to leave the Vice President and Congress the chance to deliver on their promises to appoint new magistrates. Nonetheless, she has started the first phase of her campaign -- the gathering of other litigants to her cause. On March 17 she met with the La Paz bar association (Colegio de Abogados) and on March 18 she traveled to Tarija to meet with its local bar association. She acknowledges many lawyers may refrain from signing on to the case, but thinks that many will join as the lack of a Constitutional Tribunal directly (and negatively) impacts their income. She acknowledged that her former Tribunal magistrates have essentially abandoned her and the Tribunal, having declined to support her impeachment campaign and other efforts to save the Tribunal.

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MAS Constitution Not on the Court's Docket
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¶9. (C) To date, no major cases related to the MAS constitution have been sent to the Constitutional Tribunal. The opposition has not sent any cases regarding the procedural and legal abnormalities surrounding the Constituent Assembly in Sucre or Oruro for the Constitutional Tribunal to review. (Comment: Presumably the opposition is waiting until the Tribunal is re-constituted, before sending over its cases. End Comment).

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Comment
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¶10. (C) Had the MAS wanted to move quickly on Constitutional Tribunal appointments it could have done so months ago. Magistrate appointments only require the approval of two-thirds of the members of Congress present. In contrast, the appointment of Supreme Court justices requires the approval of two-thirds of all the members of Congress (present or not). The MAS could have appointed magistrates without the participation of the opposition as long as it mustered the participation of two opposition Senators (or their alternates) to form a Senate quorum. With a controlling majority in the lower house, the MAS can always form a quorum in the lower house without any opposition participation. Given the MAS has passed legislation on several occasions (most recently February 28) without any opposition presence, it could have made appointments to the Tribunal if it had wanted to. In all likelihood, the MAS preferred not having a judicial body that could rule unconstitutional many of its recent actions in Congress and in the Constituent Assembly.

¶11. (C) Persevering democracy, the Constitutional Tribunal, and the rule-of-law are not the MAS' primary objectives for recently wanting to appoint new magistrates. If the MAS goes forward with appointments, it likely wants the Tribunal to rule against the autonomy referenda. That the MAS needs the Tribunal as a block on the autonomy referenda is predicated on two assumptions: that the party wishes to maintain a veneer of legitimacy/legality as it tries to block the referenda and that it needs a stronger legal footing if it wishes to rely on force to prevent the May 4 referendum. End Comment.

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